

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #8	CCRB Case #: 201601157	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 02/07/2016 1:00 AM	Location of Incident: 212th Street and 99th Avenue	Precinct: 105	18 Mo. SOL 8/7/2017	EO SOL 8/7/2017	
Date/Time CV Reported Sun, 02/07/2016 1:07 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/11/2016 1:14 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Mark Ward	4696	942687	105 PCT
2. POM Ryan Hoffmann	29755	950591	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Mark Ward	Abuse: Sergeant Mark Ward stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Ryan Hoffmann	Abuse: Police Officer Ryan Hoffmann stopped the vehicle in which § 87(2)(b) was an occupant.	
C.SGT Mark Ward	Abuse: Sergeant Mark Ward searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Ryan Hoffmann	Abuse: Police Officer Ryan Hoffmann refused to provide his shield number to § 87(2)(b)	
E.SGT Mark Ward	Abuse: Sergeant Mark Ward refused to provide his shield number to § 87(2)(b)	
F.SGT Mark Ward	Abuse: Sergeant Mark Ward threatened to issue summonses to § 87(2)(b)	
G.SGT Mark Ward	Abuse: Sergeant Mark Ward seized § 87(2)(b)'s cell phone.	
H.POM Ryan Hoffmann	Discourtesy: Police Officer Ryan Hoffmann spoke discourteously to § 87(2)(b)	

### Case Summary

On February 7, 2016, at approximately 12:50 am, § 87(2)(b)'s vehicle was stopped by Sgt. Mark Ward and PO Ryan Hoffmann (105<sup>th</sup> Precinct Anti-Crime), at 212<sup>th</sup> Street and 99<sup>th</sup> Avenue in Queens (**Allegations A, B**). Sgt. Ward instructed § 87(2)(b) to exit the vehicle, and then searched it (**Allegation C**). Both officers refused to provide their shield numbers to § 87(2)(b) (**Allegations D, E**). When asked, Sgt. Ward told § 87(2)(b) "so you want to be a smart guy, I'm going to give you ten tickets now." (**Allegation F**) When § 87(2)(b) then attempted to call 911 on his iPhone, Sgt. Ward removed the phone from § 87(2)(b)'s hand, stating "you are not going to use your phone." (**Allegation G**) § 87(2)(b) then called 911 on his Apple Watch and requested assistance, telling the operator "I'm afraid for my life." When § 87(2)(b) said this, PO Hoffmann repeated the remark "afraid for your life" in a discourteous manner (**Allegation H**). The officers left the scene without returning § 87(2)(b)'s iPhone. No summonses were issued and there is no video documentation of the incident. § 87(2)(b) was connected with IAB while still on scene. IAB referred § 87(2)(b)'s stolen property allegation to the Office of the Chief of Department (Board Review 01 – IAB log; Board Review 02 – § 87(2)(b) Phone Statement; Board Review 03 – § 87(2)(b) CCRB Statement; Board Review 09 – § 87(2)(b) 911/IAB Audio Transcriptions).

### Mediation, Civil and Criminal Histories

§ 87(2)(b) rejected mediation. Notices of claim results are pending. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

### Civilian and Officer CCRB Histories

- § 87(2)(b) filed a previous complaint § 87(2)(b)
- Sgt. Ward has been a member of service for 9 years. During this time, he has been a subject in 7 cases, totaling 22 allegations. In 2012, he was substantiated on a strip-search charge (#201208475), for which he lost 5 vacation days. § 87(2)(g)
- PO Hoffmann has been a member of service for 4 years. During this time, he has been a subject in 6 cases, totaling 13 allegations. In 2014, he was substantiated on a frisk charge (#201403154), for which he received command level instructions. § 87(2)(g)

### Findings and Recommendations

**Allegation A: Abuse –Sgt. Mark Ward stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation B: Abuse – PO Ryan Hoffmann stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation C: Abuse –Sgt. Mark Ward searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation D: Abuse – PO Ryan Hoffmann refused to provide his shield number to § 87(2)(b)**

**Allegation E: Abuse – Sgt. Mark Ward refused to provide his shield number to § 87(2)(b)**

**Allegation F: Abuse – Sgt. Mark Ward threatened to issue summonses to § 87(2)(b)**

**Allegation G: Abuse – Sgt. Mark Ward seized § 87(2)(b)'s cell phone.**

**Allegation H: Discourtesy – Demeanor/tone: PO Ryan Hoffmann spoke discourteously to § 87(2)(b)**

The following facts are undisputed. On February 7, 2016, shortly prior to 1:00 am, § 87(2)(b)'s vehicle was stopped by Sgt. Ward and PO Hoffmann at the intersection of 212<sup>th</sup> St. and 99<sup>th</sup> Ave. Sgt. Ward instructed § 87(2)(b) to exit the vehicle, and then searched the area around the driver's seat (manner and scope is disputed). During the stop, § 87(2)(b) asked the officers for their shield numbers. At some point during the stop, Sgt. Ward seized a mobile phone held by § 87(2)(b) (Board Review 03 – § 87(2)(b) Statement; Board Review 04, 05 – Sgt. Ward, PO Hoffmann Statements).

§ 87(2)(b) testified that he had not consumed any drugs or alcohol that night, and never smoked marijuana inside his vehicle, a white Mercedes coup with dark tints, registered in his name § 87(2)(b) (§ 87(2)(b) did not know if the tints were legal). § 87(2)(b) had just left his house, located approximately five minutes away, and was driving to Manhattan, where he intended to spend his night. While heading north on 212<sup>th</sup> St., a residential area, § 87(2)(b) obeyed all traffic laws: he drove under the speed limit at approximately 20 miles per hour, and slowed down before the stop sign at 99<sup>th</sup> Avenue. Upon stopping, a black sedan with flashing police lights suddenly swerved in front of him. Until then, § 87(2)(b) had not seen or heard any police vehicles behind him (Board Review 03 – § 87(2)(b) Statement).

Sgt. Ward and PO Hoffmann approached the driver's window, instructed § 87(2)(b) to exit, and directed him to the rear. As § 87(2)(b) was with PO Hoffmann at the rear, Sgt. Ward entered the vehicle. Through the rear window, § 87(2)(b) saw Sgt. Ward sitting in the driver's seat: he appeared to be going through personal effects in an open compartment on the driver's door, and inside a center console between the seats. Approximately five minutes later, as Sgt. Ward was still inside, § 87(2)(b) questioned PO Hoffmann about the search, and asked him for his shield number – he received no response. At this time, Sgt. Ward exited and came to the rear, prompting § 87(2)(b) to ask him for his shield number. Without providing it, Sgt. Ward told § 87(2)(b) “so you want to be a smart guy, I’m going to give you ten summonses now.” Sgt. Ward then asked

for § 87(2)(b)'s license registration, and insurance, permitting him to get them from the vehicle. § 87(2)(b) retrieved the documents, along with his iPhone, and handed over the documents as he stepped out. Upon doing so, § 87(2)(b) began dialing 911 on his iPhone, at which time Sgt. Ward grabbed the iPhone out of his hand, stating "you are not going to use your phone." (Board Review 03 – § 87(2)(b) Statement).

As Sgt. Ward walked away, § 87(2)(b) then used his Apple Watch to call 911, while PO Hoffmann stood near him. Once connected, § 87(2)(b) told the operator that he had been stopped by officers who made him fear for his life, and requested that another unit respond for his safety. When § 87(2)(b) said this, PO Hoffmann began to mock him, repeating the phrase "fear for my life" in a condescending manner. § 87(2)(b) advised that the officers would not provide their shield numbers, but relayed the sedan's license plate to the operator. At this time, the officers whispered to each other and returned to the sedan. When § 87(2)(b) – still on the call – asked Sgt. Ward for his iPhone, but did not receive a response. The officers drove off without returning the iPhone, which § 87(2)(b) reported to the operator. Returning to his vehicle, § 87(2)(b) found that CDs and loose papers, strewn on the floorboards, had been removed from the center console and both front door compartments. § 87(2)(b) left the scene without waiting for any dispatched units – he feared that Sgt. Ward and PO Hoffmann might return. The next day, § 87(2)(b) went to the 105<sup>th</sup> Precinct where he was told that an IAB investigation was underway. § 87(2)(b) was stopped for approximately 17 minutes, and the officers never explained why: they did not inquire about drugs or weapons, and issued him no summonses (Board Review 03 – § 87(2)(b) Statement).

The investigation reviewed the audio recordings of § 87(2)(b)'s 911 and IAB phone calls (Board Review 08 – 911 Audio; Board Review 06 – IAB Audio). Connected to the 911 operator at 12:59 am, § 87(2)(b) begins by asking for police assistance, stating that officers have stopped him and taken his phone: "I'm a little scared... They got me holed up here for a little while now. I gave them my ID, registration... They just have me sitting here. It's on a dark block – could you send some other cops..." (Board Review 09 – Audio Transcription) § 87(2)(b) then states that the officers took his phone from him, stating "it's really getting serious, it's never happened to me before." § 87(2)(b) then asks if the operator can document the officers' shield numbers, stating: "I want you to stay on the phone ...I'm afraid for my life." When § 87(2)(b) says this, an unknown background voice twice repeats the phrase "afraid for your life." A background voice then appears to state "going fifty miles an hour," and § 87(2)(b) says that he was not speeding. § 87(2)(b) then tells the operator that the officers refused to provide their shield numbers, and then reads out the sedan's license plate number. Transferred to the IAB's Command Center at approximately 1:07 am, § 87(2)(b) confirms that the officers are still there, while saying "can I get my phone?" to someone in the background. Soon after, § 87(2)(b) reports that the officers left the scene without returning his phone. Recounting what happened, § 87(2)(b) tells IAB that the officers stopped him for no reason, searched his vehicle, threatened to issue him "ten tickets," and left with his iPhone. § 87(2)(b)'s CCRB phone statement, obtained on February 12, 2016, was consistent with the 911/IAB calls, and with his later verified testimony (Board Review 02 – § 87(2)(b) Phone Statement).

A handwritten UF-250 prepared by PO Hoffman notes: prior period of observation – 5 minutes; duration of stop – ten minutes; crime suspected – criminal possession of marijuana; circumstances for stop – strong odor of marijuana; how identified – shield, verbal (Board Review

10 – UF-250) In his memo book, PO Hoffmann described the stop as follows: “excessively dark window tints, speed in excess of 65 miles per hour, residential area, refused to stop, strong odor of marijuana/alcohol.” (Board Review 11 – PO Hoffmann Memo Book) Sgt. Ward noted the following: “tints, excessive speed...refused to stop... strong odor of marijuana and alcohol / refused to immediately comply.” (Board Review 12 – Sgt. Ward Memo Book)

In their CCRB testimonies, Sgt. Ward (as driver) and PO Hoffmann (as passenger) both stated that they observed § 87(2)(b) speeding at approximately 40 to 50 miles per hour, on a residential block near 209<sup>th</sup> St. and Hollis Ave. The officers noticed the Mercedes’ darkly tinted windows, and began pursuing § 87(2)(b) when he ran through a stop sign, on his left onto Hollis Ave. The officers pursued § 87(2)(b) closely on Hollis Ave., with their lights and sirens on, but § 87(2)(b) refused to stop, soon turning left onto a side street: while Sgt. Ward believed that § 87(2)(b) first turned left onto 211<sup>th</sup> St., and then made additional turns to 212<sup>th</sup> St., PO Hoffmann believed that § 87(2)(b) made a single left onto 212<sup>th</sup> Street and stayed course. Both officers stated that § 87(2)(b) accelerated rapidly during this time, reaching speeds of 65 to 75 miles per hour, prompting them to accelerate as well. However, the officers could not approximate the distance between the vehicles during this pursuit. Sgt. Ward stated that they pursued § 87(2)(b) for four blocks, and PO Hoffmann stated that it was under a minute in duration (Board Review 04, 05 – Sgt. Ward, PO Hoffmann Statements).

Sgt. Ward eventually swerved in front of the Mercedes when § 87(2)(b) slowed down at 99<sup>th</sup> Ave. Sgt. Ward approached the driver’s side and PO Hoffmann the passenger side. There, Sgt. Ward instructed § 87(2)(b) to lower his window, which he did promptly. As soon as the window was down, Sgt. Ward saw smoke emerge from inside the vehicle, and immediately smelled the odor of marijuana. Sgt. Ward instructed § 87(2)(b) to place his hands on the steering wheel, and then inquired about what he had been doing, where he was going, and if he had been smoking marijuana. § 87(2)(b) only stated that he had been “partying” and that he was going to another party. When Sgt. Ward instructed him to exit the vehicle, § 87(2)(b) stepped out with a mobile phone in his hand, attempting to dial a number, prompting Sgt. Ward to take the phone away from him. Sgt. Ward stated “there’s a time and place for everything – now’s not the time.” § 87(2)(b) initially did not say anything, and provided his driver’s license, but soon began to “berate” and “belittle” Sgt. Ward, saying that his time was being wasted. When advised that he had been pursued for four blocks, § 87(2)(b) said he had not seen them. Now standing approximately three feet away from § 87(2)(b) Sgt. Ward smelled alcohol on his breath (Board Review 04 – Sgt. Ward Statement). From his position on the passenger side, PO Hoffmann stated that he also smelled marijuana emanating from the vehicle, even though the passenger windows were likely closed. PO Hoffmann did not hear what was said between Sgt. Ward and § 87(2)(b) before he exited. PO Hoffmann did not see § 87(2)(b) exit with a phone, and did not see Sgt. Ward confiscate a phone at any point (Board Review 05 – PO Hoffmann’s Statement).

Sgt. Ward directed § 87(2)(b) to go to the rear with PO Hoffmann, and then placed the mobile phone inside an open compartment on the driver’s door. Sgt. Ward then inspected the immediate area around the driver’s seat for traces of marijuana and open containers, for a period of approximately seven minutes. With his two feet on the street, Sgt. Ward visually inspected the cup holder on the center console, and the floorboard, without touching any interior surfaces, objects, or personal effects. However, Sgt. Ward acknowledged when questioned that his body

broke the plane of the vehicle's doorway. At some point, Sgt. Ward noticed § 87(2)(b) s. § 87(2)(b) employee ID lying on the center console. No evidence of contraband was found. While at the front, Sgt. Ward heard § 87(2)(b) being "very cocky" and "belligerent" with PO Hoffmann, calling the officers "pigs" and "dicks." Sgt. Ward also heard § 87(2)(b) ask PO Hoffmann for his name and shield number, but did not recall what prompted the question, or how it was answered (Board Review 04 – Sgt. Ward's Statement)

However, PO Hoffmann – who had no idea what Sgt. Ward was doing at the front – did not describe § 87(2)(b) in this manner. When PO Hoffmann got to the rear, he began smelled marijuana and alcohol on § 87(2)(b) and questioned him about the odors: § 87(2)(b) was initially resistant and evasive, and only stated that he was coming from a party, and going to another party, without providing further details, and without confirming whether he had smoked or imbibed. However, once PO Hoffmann further explained why he was being stopped – now referring to his tints and speeding – § 87(2)(b) appeared to understand his errors, and started to plead for leniency: he asked PO Hoffmann "for discretion," and stated that he was a hardworking man who § 87(2)(b). At some point thereafter – PO Hoffmann still did not know where Sgt. Ward was – § 87(2)(b) asked him for his name and shield number, which he provided. PO Hoffmann believed that this was the only time § 87(2)(b) asked for name and shield, and that Sgt. Ward was never asked the same, stating that Sgt. Ward never came to the rear to speak with § 87(2)(b) (Board Review 05 – PO Hoffmann's Statement). However, Sgt. Ward stated that he came to the rear after his seven minute inspection, at which time § 87(2)(b) asked both officers for their names and shield numbers, which they both provided verbally. Shortly thereafter, § 87(2)(b) asked the officers for their names and shield numbers a second time– while Sgt Ward did not know why, both officers identified themselves again (Board Review 04 – Sgt. Ward's Statement).

Citing the fact that it was Super Bowl weekend, Sgt. Ward and PO Hoffmann testified that they ultimately decided to give § 87(2)(b) "a break" by not summoning him for any traffic violations – his tints, his speeding, and his failure to stop. Beyond stating that he had seen his § 87(2)(b) ID, which gave him the impression that § 87(2)(b) was a "working guy," Sgt. Ward could not specify exactly when, why, and how he arrived at this decision. PO Hoffmann stated that the decision was his own, and did not recall consulting Sgt. Ward. Both officers stated that they told § 87(2)(b) that he was getting a break, and that he appeared to appreciate it. However, the officers acknowledged that shortly thereafter – neither could approximate when – § 87(2)(b) made a call on his Apple Watch, and appeared to be speaking with an operator, 911 or IAB. The officers heard § 87(2)(b) request police assistance, but did not recall what else was said: both stated that they never heard § 87(2)(b) tell the operator that he feared for his life, and denied repeating a phrase like that to him. Sgt. Ward stated that § 87(2)(b) asked for his name and shield number a third time, possibly while on the call. In response, Sgt. Ward asked § 87(2)(b) to report his license plate, telling him that "the plate will come back directly to me and my partner." § 87(2)(b) read the sedan's plate number to the operator. Before leaving, Sgt. Ward asked him "is everything all right?" and § 87(2)(b) replied "not a problem." Sgt. Ward did not know why § 87(2)(b) would have continued to ask him for his name and shield. Neither officer knew why § 87(2)(b) had called 911 after he knew he was getting a break. Sgt. Ward denied telling § 87(2)(b) that he would issue him "ten tickets," and PO Hoffmann did not recall if Sgt. Ward ever conversed with § 87(2)(b) after he exited his vehicle. While neither officer heard § 87(2)(b) say

anything about his phone to the operator, Sgt. Ward stated that § 87(2)(b) at some point before they left, asked him where his phone was. Sgt. Ward told § 87(2)(b) that it was in the door compartment. (Board Review 04, 05 – Sgt. Ward, PO Hoffmann Statements)

Both officers stated that they released § 87(2)(b) despite him smelling of alcohol and marijuana, because he did not appear to be significantly impaired. While no field sobriety tests were conducted, the officers determined, from § 87(2)(b)'s eyes, gait, and demeanor, that he was fine to drive, despite the earlier high-speed pursuit, and despite him saying that he was going to another party. Sgt. Ward ultimately stated: “I felt like he was good enough to drive” – “he was just being a typical New York asshole.” (Board Review 04, 05 – Sgt. Ward, PO Hoffmann Statements)

A vehicle stop is valid if there is probable cause that the driver committed a traffic violation, “regardless of the officer's underlying motivation to conduct another investigation.” (Board Review 13- People v. Weishaupt, 118 A.D.3d 1100 (2014)) Under the automobile exception to the general warrant requirement, an officer may search a vehicle only if there is probable cause that it contains contraband, weapon, or evidence of a crime: breaching the plane of a vehicle’s doorway constitutes a search (Board Review 14 – People v. Hernandez, 238 A.D.2d 131 (1997)) Under the Fourth Amendment, seizure of personal property is *per se* unreasonable: the limitations applicable to the seizure of a person also define the seizure of one’s personal effects; a temporary seizure is still an “intrusion” on the owner’s possessory interests.” (Board Review 15 – United States v. Place, 462 U.S. 696 (1983)) “Cell phones differ in both a quantitative and a qualitative sense from other objects that might be carried” on a person, and thus require greater privacy protections (Board Review 16 – Riley v. California, 134 U.S. (2014)). Per the Patrol Guide section on Anti-Crime officers’ duties: “when a vehicle stop is made on the basis of an observed traffic infraction, uniformed members of the service should take proper police action, including the issuance of summonses.” (Board Review 17 –P.G. 202-25)

§ 87(2)(g)

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Squad: 8

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date